

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4179 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MOHMADHUSAIN ISABBHAI MANSURI

Appearance:

1. Special Civil Application No. 4179 of 1989
MR PRANAV G DESAI for Petitioner No. 1
NOTICE SERVED for Petitioner No. 1
MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 19/02/2004

ORAL JUDGEMENT

This petition is filed under Article 227 of the Constitution of India, challenging the award passed by the Presiding Officer, Labour Court, Baroda in Reference (LCV) No. 565 of 1983, on 30.11.1988, whereby the

respondent workman was reinstated with full backwages.

It is the case of the petitioner Corporation that when the respondent was on duty as driver in the bus of the Corporation which was plying between Baroda and Sevasi, and when the bus was plying between Gotri and Sevasi, the bus dashed against one cyclist Chandubhai B. Solanki who was going ahead of the bus, and as a result of the said accident the said cyclist fell down and succumbed to the injuries. It is also the case of the petitioner that Police complaint was filed in the Court of learned Judicial Magistrate, First Class, Second Court at Baroda and the Criminal Court, however, acquitted the respondent for offences punishable under Sections 279 and 304A of the Indian Penal Code, read with Sections 112 and 116 of the Motor Vehicles Act.

In the Motor Accident Claim Petition filed by the heirs and legal representatives of the deceased Chandubhai Solanki claiming compensation of Rs. 40,000/-, the Tribunal has awarded compensation of Rs. 26,621.91 paise. It is further stated that a Departmental enquiry was held against the respondent and at the conclusion of the said enquiry, the Competent Authority by an order dated 7.9.1982, dismissed the respondent from service.

Being aggrieved by the said order of the Competent Authority, the respondent workman invoked the jurisdiction of the Labour Court by filing Reference and making prayer for reinstatement with full backwages. In the said Reference, the petitioner Corporation filed a written statement denying the allegations and it was pointed out that the respondent was given full opportunity of hearing and the principle of natural justice was fully complied with. It was further pointed out in the said written statement that in the enquiry the representative of the respondent workman was present and he has thus participated in the enquiry. It was further stated that a show cause notice was issued to respondent workman and being angry with the said show cause notice, the respondent had given a notice for strike in the office of the Conciliation Officer and thereafter an order was passed suspending the respondent without wages.

The Labour Court thereafter passed an order dated 30.11.1988, after appreciating the evidence produced before it by both the parties and after considering the submissions made on behalf of the respective parties. While allowing the said Reference, the Labour Court has cancelled the order of dismissal of the respondent with

effect from 1.7.1980, and he was ordered to be reinstated in service in his original place with continuity of service and with full backwages. It is this order of the Labour Court which is under challenge in the present petition.

The petition was admitted on 5.9.1989 and with regard to interim relief, this Court had granted interim stay of the award in respect of 25% of backwages only. The Court had clarified that the petitioner Corporation shall pay 75% of the backwages to the respondent workman without prejudice to its rights and contentions in the present proceedings. It was further observed by the Court that these 75% backwages will be paid on the basis that the respondent workman has continued in service all through out. The Court had further directed that this amount should be paid over to the respondent workman directly within six weeks from the date of the said order.

The award of the Labour Court was challenged mainly on the ground that the Labour Court has not taken into consideration the material aspects of the matter, and that due to the negligence of the respondent workman the accident had occurred, resulting in the death of the cyclist. It was also contended in the petition that the Labour Court should have appreciated that the respondent workman was acquitted by the Criminal Court only on technical ground and that would not finally conclude the issue so far as the Departmental proceedings are concerned. The above said order was also challenged on the ground that the Labour Court has not considered the material aspect that the Claims Tribunal had found respondent workman guilty of the offence and responsible for the accident while awarding compensation to the heirs and legal representatives of the deceased cyclist. It was also contended that the Labour Court has unnecessarily given more weightage to the judgement of the Criminal Court acquitting the respondent. It was finally contended that award passed by the Labour Court was therefore unsustainable on law and it deserves to be set aside.

Mr. Upadhyay, learned Advocate appearing for the respondent workman on the other hand submitted that the Labour Court has correctly appreciated the evidence produced before it and has come to the right conclusion and it should not be interfered with by this Court by exercising extra-ordinary jurisdiction under Article 227 of the Constitution of India. He has further submitted that the Labour Court has given categorical finding to

the effect that the accident did not occur because of any fault or negligence on the part of the respondent workman. He has further submitted that the respondent was acquitted in the criminal proceedings and that would conclusively prove the respondent's non-indulgence in the commission of the alleged offence. Mr. Upadhyay has further relied upon the decision of the Hon'ble Supreme Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., reported in AIR 1999 SC 1416, wherein it was held that the whole case of prosecution was thrown out and the appellant was acquitted in a situation where the appellant was acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved and it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings to stand. On the basis of the observations made in the aforesaid judgement, Mr. Upadhyay submitted that since the respondent was acquitted of the criminal charges in the criminal proceedings, the Labour Court has rightly held in favour of the respondent and quashed the dismissal order passed by the Competent Authority on the basis of the Departmental proceedings. He urged that the said order therefore, be sustained and the petition filed there against be dismissed.

After hearing learned Counsel for the parties and after having considered the facts and submissions as well as the pleadings, this Court is of the opinion that no further interference is called for in the award of the Labour Court, and at the time of admission of this matter what this Court had ordered with regard to stay against the payment of backwages to the extent of 25% only is also found to be just and proper even while deciding this petition at the final stage. The Labour Court has appreciated all the evidence placed before it in their proper perspective and have come to the right conclusion. More over, in support of the findings arrived at by the Labour Court, the judgement rendered in the criminal proceedings would also come to the rescue of the respondent. When on the same set of facts and on consideration of the same evidence, the Competent Court comes to a particular conclusion, then the same would have definitely a persuasive value so far as the Departmental proceedings are concerned.

Considering over all view of the matter and keeping in mind the settled legal proposition of law, this Court holds that the award passed by the Labour Court is required to be modified only to the extent of 25% of backwages and hence, the said award is substituted

to the effect that the respondent workman was allowed to be reinstated with 75% of backwages instead of 100% backwages with continuity of service. Since 75% of backwages was paid to the respondent workman pursuant to the order passed by this Court on 5th September, 1989, the petitioner Corporation is directed not to recover the said amount from the respondent. It is further made clear that this Court has not disturbed the finding given by the Labour Court with regard to the continuity of service. It is expected that the petitioner will give all consequential benefits to the respondent workman. With these observations the petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(K.A. Puj, J.)

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